

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

GERIATRIC MEDICAL SERVICES, INC.
d/b/a LIBERTY COURT

Employer

and

Case 4–UC–384

DISTRICT 1199P, SERVICE EMPLOYEES
INTERNATIONAL UNION, AFL-CIO, CLC

Petitioner

DECISION, ORDER AND CLARIFICATION OF BARGAINING UNIT

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned Regional Director.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Employer operates a 150-bed skilled nursing facility and a 36-bed assisted living unit at 1526 Lombard Street in Philadelphia, Pennsylvania (herein called Liberty Court). The Petitioner seeks to include the job classification of unit clerk in its contractual unit of all full-time and regular part-time certified nursing assistants (CNAs), restorative aides, dietary aides, relief cooks/aides and laundry aides. The Employer takes the position that unit clarification is not appropriate because the unit clerk's functions were historically performed by the medical records coordinator, the central supply clerk and the receptionists, employees excluded from the unit. The Employer asserts that, in any event, the unit clerks do not share a substantial community of interest with the unit employees. The Employer argues that they more appropriately share a community of interest with the business office clericals who are excluded from the unit.

The Employer and the Petitioner are parties to a collective-bargaining agreement, effective by its terms from September 14, 2000 to September 13, 2002, covering a unit of all full-time and regular part-time certified nursing assistants (CNAs), restorative aides, dietary aides, relief cooks/aides, housekeeping aides, and laundry aides, excluding licensed practical nurses (LPNs), guards, professional employees, cooks, rehabilitation employees, recreation/activities employees, supervisors and business office clericals.¹ The parties stipulated that the contractual unit does not include the classifications of medical records coordinator, central supply clerk, and receptionist. The parties also stipulated that the unit clerk position was not in existence and not discussed in the negotiations for the current bargaining agreement.

The Employer operated a traditional long-term care center until almost four years ago when it converted the Lombard Street facility to include skilled, sub-acute and assisted living care. The sub-acute unit, located on the second floor, was designed to be a short-term rehabilitation unit with the goal of admitting, treating and discharging the residents to return to their community or to a lesser level of care. As a result of the conversion, especially the creation of the sub-acute unit, the volume of business in the facility greatly increased. Currently, approximately 25 to 50 residents are admitted and/or discharged per month, with the bulk of monthly admissions and/or discharges being in this unit. Scott Centak, the Employer's Administrator, testified that in April or May 2001, the Employer created the unit clerk position because of the need for clerical assistance in the sub-acute unit to meet the higher volume of record-keeping related to increased admissions, discharges and corresponding treatments. The position was not posted pursuant to the collective bargaining agreement. Rather, Centak, Sub-acute Program Manager Patricia O'Reardon and Director of Nursing Eileen Blood selected bargaining unit employee Nicole McFarlane for this position. McFarlane, a certified nursing assistant in the sub-acute unit, has an Associate's Degree in nursing and was the only applicant for the position. The unit clerk position requires a high school degree with college or business school course work. The position was filled in May or June 2001.

After it learned that the Employer had placed McFarlane in the newly created position of unit clerk, the Petitioner discussed the matter with the Employer at a Labor-Management meeting held in June 2001. Andrew Friedman, the Petitioner's Organizer, testified that the Employer informed the Petitioner that it intended to create three non-unit, permanent unit clerk positions. However, Centak testified that besides McFarlane, the Employer anticipates hiring only one additional unit clerk. According to Centak, this unit clerk will handle both the third floor (skilled unit) and the fourth floor (long-term care unit). This unit clerk will be hired when the volume of admissions and discharges on those floors justifies filling the position. At the time of the close of the hearing, McFarlane was the only employee occupying the unit position.

McFarlane works at the nurses station on the second floor. The Employer chose that work location because the work requires extensive review of patient charts which are located in the unit, and because the Employer believed that the unit clerk would most effectively handle

¹ The prior collective bargaining agreement was between the Petitioner and Genesis Health Ventures, Inc., d/b/a Rittenhouse Care Center, the Employer's former name. It was effective by its terms from April 10, 1998 to September 13, 2000.

incoming unit telephone calls from that location. The primary responsibility of McFarlane and the unit clerk to be hired on other floors in the future, is to provide clerical support to the respective units. The majority of the unit clerk's time is spent in telephone conversations with doctors' offices and transportation companies concerning matters contained in the resident's records which are kept on the floor. The unit clerk is responsible for the condition of residents' charts which are to be neatly placed on racks at the nurses station. In addition, the unit clerk spends a substantial amount of time initiating forms for the preparation of patient admissions and discharges, and delivering new admissions charts to employees working in the unit. On a daily basis, the unit clerk transfers vital signs and weights from daily assignment sheets (prepared by nurses aides) to individual patient charts. The unit clerk maintains a current bathing schedule on the bath record for use by the nurses aides, notifies the Dietary Department of patient dietary changes, and screens and forwards incoming telephone messages for all nursing personnel in the unit. The unit clerk checks and restocks the supply drawer at the nurses station, orders medical supplies as directed by the Director of Nursing, monitors the supply of fax machine paper, faxes physician orders, delivers faxed printouts and maintains an orderly nurses station. The Employer envisions that in the future, unit clerks will relieve the Employer's medical records coordinator and receptionist when those individuals are absent from work. During the course of the working day, the unit clerk mainly interacts with nurses aides, the Unit Manager, the charge nurses, doctors and transportation companies.

The unit clerk reports to Sub-acute Program Manager O'Reardon, who reports to the Director of Nursing. The nurses aides in the sub-acute unit, report to the charge nurses and the charge nurses report to O'Reardon. Similarly, the nurses aides on the third and fourth floors report to the charge nurses, and the charge nurses report to the Unit Managers who, in turn, report to the Director of Nursing. The other unit clerk to be hired soon will report to third floor Unit Manager Relova. The nurses aides on all three floors also receive direction from the Director of Nursing or Unit Manager. The records coordinator and supply clerk are supervised by the Director of Nursing; the receptionist is supervised by the Business Office Manager.

The medical records coordinator and central supply clerk work in separate offices on the lower level of the facility. The receptionists work on the ground floor in the lobby area across from the main entrance. The medical records coordinator maintains patient records in an area near her office as required by government regulation and provides information contained in those records for summaries and insurance reports. The central supply clerk receives and checks shipments of supplies from within the facility and issues them to personnel. The receptionist is responsible for operating the switchboard and paging systems, and providing directions to visitors. The receptionist also performs clerical support duties. The record shows that the unit clerk interacts with the medical records coordinator when obtaining medical record information and with the central supply clerks when receiving supplies. CNA Ethel Hall, who works on the second floor, testified that her work required interaction with the unit clerk for at least one hour per day. In contrast, she saw the medical records coordinator on the second floor about twice a day for about five minutes each, the central supply clerk for approximately five minutes per day on the floor, and the receptionists only during lunch break and at the end of the work day.

The only record evidence showing the similarities between the current duties of the unit clerk and the former duties of the medical record coordinator, central supply clerk and

receptionist is Centak's testimony that prior to the creation of the unit clerk position, the medical records coordinator "provided a fair amount of support to all three floors." The record does not establish which job classification interacted with doctors' offices for patient care matters, transferred vital signs to patient charts, or prepared admission and/or discharge records. The job descriptions of the unit clerk and the medical records coordinator both state that they maintain the accuracy of charts, prepare closed charts, answer telephone inquiries and assure that medical certifications are signed. Like the central supply clerk, the unit clerk is responsible for maintaining unit supplies. Lastly, like the receptionist, the unit clerk arranges conferences and appointments.

Like the medical records coordinator and the central supply clerk, the unit clerk on the second floor works from 9:00 a.m. to 5:30 p.m., Monday to Friday. The receptionists work either the 8:00 a.m. to 4:00 p.m., 4:00 p.m. to 12:00 a.m., or 12:00 a.m. to 8:00 a.m. shift. The part-time receptionist works on the weekends. Nurses aides work either the 7:00 a.m. to 3:00 p.m., 3:0 p.m. to 11:00 p.m. or 11:00 p.m. to 7:00 a.m. shift Monday through Friday, plus every other weekend. The job descriptions for the unit clerk, the medical records coordinator, the central supply clerk and the nurses aides indicate that they are paid at a grade 9 level while receptionists are paid at a grade 7 level. The unit clerk is paid slightly higher than nurses aides who are paid at a rate provided in the collective bargaining agreement. The unit clerk, the medical records coordinator, the central supply clerk, the receptionists and the nurses aides all are hourly paid. The unit clerk has substantially identical fringe benefits as the employees covered by the collective bargaining agreement, except for a difference in the cost of co-pays for medical visits and prescription coverage. The unit clerk on the second floor does not wear a uniform or nursing scrubs. The unit clerk wears standard business attire, like the medical records coordinator, the central supply clerk and the receptionists.

The Board will normally not entertain a petition for unit clarification during the term of a contract to modify the composition of a unit that is clearly defined in the collective bargaining agreement. *Bethlehem Steel Corp.*, 329 NLRB 241 (1999). However, it is well-established that unit clarification is appropriate for resolving ambiguities concerning the unit placement of individuals in a newly established classification or an existing classification which has undergone recent, substantial changes in the duties and responsibilities of the employees involved so as to create a real doubt as to whether such employees continue to fall within the classification in issue. *Premcor, Inc.*, 333 NLRB No. 164, at 1-2 (2001); *Union Electric Co.*, 217 NLRB 666, 667 (1975). Here, it is undisputed that the Employer established the unit clerk classification after the parties completed negotiations for their most recent contract based on the new operational needs created by the increased admissions and discharges of patients. The Employer asserts that unit clarification is inappropriate because the unit clerk's functions were performed by clericals historically excluded from the unit, namely the medical records coordinator, central supply clerk and the receptionist. However, there is little evidence to support the Employer's argument. Thus, the record only shows that the current job descriptions of the unit record clerk and the medical records coordinator have some overlapping functions and that a "...fair amount of support to all three floors" was provided by the medical records coordinator prior to creation of the unit clerk position. Accordingly, I find that unit clarification is appropriate in this case. See *NLRB v. Magna Corporation*, 734 F.2d 1057, 116 LRRM 2950 (5th Cir. 1984) (unit clarification appropriate where substantial changes to disputed employee's

job; no merit to argument that clarification inappropriate because position historically excluded from unit).²

In deciding whether to clarify a unit or include a newly created position, the Board considers traditional community of interest factors. *Magna*, supra, 116 NLRB at 2954, fn. 7; *Holly Hill Fruit Products Co.*, 256 NLRB 209, 210 (1981). In the health care field, the Board recognizes that there are markedly different interests between ward or unit clerks who spend a substantial amount of time in patient care areas performing functions directly related to such care, and business office clericals who spend little time in those areas and perform traditional clerical work in isolated offices. *Mercy Hospitals of Sacramento, Inc.*, 217 NLRB 765, 770 (1975); *Lincoln Park Nursing and Convalescent Home*, 318 NLRB 1160, 1164 (1995). See also, the Board's rulemaking and proceedings, 53 FR 33924-26, reprinted at 284 NLRB 1528 at 1562-65. Therefore, the Board consistently has included the former type of clerical employees in service and maintenance units in hospitals where they have contact with that unit. *Lincoln Park Nursing and Convalescent Home, Inc.*, supra; *Mercy Hospitals of Sacramento, Inc.*, supra. This is consistent with the congressional mandate against the undue proliferation of bargaining units in the health care industry. *Mercy Hospitals of Sacramento, Inc.*, supra and *St. Catherine's Hospital*, 217 NLRB 787, 789, n. 20 (1975).

In the instant case, the unit clerk performs clerical work at the nurses station located in the unit. This work location and the unit clerk's duties, which are directly related to patient care, place the unit clerk in significant daily contact with bargaining unit employees such as certified nurses aides. In addition, the unit clerk has similar rates of compensation, working conditions and supervision as individuals in the bargaining unit. Therefore, I find that the unit clerk has more of a community of interest with employees in the bargaining unit than excluded business office clericals.³ *Sisters of St. Joseph of Peace*, 217 NLRB 797, 798 (1975); *St. Luke's Episcopal Hospital*, 222 NLRB 674, 677 (1976); *St. Catherine's Hospital*, supra. Accordingly, the Petitioner's request for unit clarification is granted and the unit clerk classification shall be included in the bargaining unit.⁴

ORDER

IT IS HEREBY ORDERED that the bargaining unit represented by the Petitioner is clarified to include the unit clerk classification.

² The Employer's reliance on *Dayton Power and Light Co.*, 137 NLRB 337, 339 (1962), in its post-hearing brief is misplaced. Contrary to the instant matter where there is slim evidence that the Unit clerk performs historically non-unit work, the employees at issue in *Dayton Power*, supra, did not perform duties which were significantly different than the duties previously performed by the former excluded employees.

³ A contrary result is not required by the limited contact which these individuals have with the excluded clericals and others such as charge nurses. *Bay State Gas*, 244 NLRB 1135, 1136 fn.5 (1979).

⁴ By letter dated December 27, 2001, the Petitioner argued that post-hearing facts, which it offered to produce at a reopened hearing, further support its argument in favor of unit clarification. As the facts stated in that letter do not change the result reached herein, I will not reopen the record to receive additional evidence, and I have not considered those factual assertions in deciding the issue presented.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, N.W., Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by **April 25, 2002**.

Signed: April 11, 2002

at Philadelphia, PA

/s/

DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four

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